In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 695

COUNTY OF SANTA BARBARA, ET AL., PETITIONERS

v.

ROBERT J. MALLEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1–6, 7–19) are reported at 426 F.2d 171 and 426 F.2d 164.

JURISDICTION

The judgments of the court of appeals were entered on April 21, 1970. On July 22, 1970, the Chief Justice entered an order extending the time for filing a petition for a writ of certiorari to September 18, 1970. The petition was filed on September 15, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

469-449—70

QUESTION PRESENTED

Whether the district court abused its discretion in refusing to issue a preliminary injunction enjoining the Corps of Engineers and the Secretary of the Interior from authorizing the construction of platforms and the commencement of drilling operations for oil on federal offshore leases without first holding a public hearing.

STATEMENT

These cases arise out of the oil well blowout of January 1969 under Platform A in the Santa Barbara Channel (Pet. App. 3, 8). Essentially they are attempts to enjoin any further oil drilling in the Channel until a public hearing has been held by the Corps of Engineers or the Secretary of the Interior or both.

Chronologically the operative facts may be summarized as follows: Prior to the blowout, the Secretary of the Interior, pursuant to the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331 *et seq.*, had issued competitive leases to the respondent oil companies (Pet. App. 9). After the blowout, the Secretary, on February 7, 1969, ordered a cessation of oil production from Platform A. A panel of experts (the DuBridge Panel)[1] was appointed at the direction of the President to recommend actions to be taken to reduce the spilling and prevent future spills. The con-

[1] In one of the three cases involved in the instant petition, access to certain data underlying the DuBridge Panel recommendations was sought as incident to the claimed right to a public hearing. The underlying data has been made available to petitioners and thus its release is no longer at issue.

clusion of the panel, in essence, was that continued drilling and depletion of the area would reduce pressure and lessen the likelihood of blowouts (Pet. App. 9). The Secretary then authorized the Union Oil Company to drill new wells which it has now commenced. Meanwhile, on August 18, 1969, the Corps of Engineers issued notices relating to applications for permits to construct a proposed drilling platform in the Channel. On September 25, 1969, the Corps decided that some of the permits should issue and that no hearings would be held.

The procedural complexities of the three suits involved in the petition are fully set forth by the court of appeals (Pet. App. 10–13).[2] The net effect of all the procedures is an attempt by the petitioners to enjoin further drilling activities in the Channel until a public hearing has been held.

The district court denied a preliminary injunction in each of the three cases. The court of appeals affirmed in two opinions, on the ground that no statute or regulation governing the actions of either the Secretary of the Interior or the Corps of Engineers required a hearing to precede the contested federal action (Pet. App. 4–6, 14–17). The court of appeals expressly refrained from passing on the question whether the statute and regulations are constitutionally defective if they do not require a hearing in these circumstances, since that constitutional question had been referred to, and is now

[2] At one stage this Court denied petitioners' petition for a writ of certiorari from an order of the court of appeals vacating a restraining order it had issued. *County of Santa Barbara, et al.* v. *Malley*, 396 U.S. 950.

pending before, a three-judge district court (Pet. App. 17–18).[3]

ARGUMENT

The decisions below, which are limited to the interpretation of the pertinent statutes and regulations, are correct and present no substantial questions warranting review by this Court.[4] Because petitioners failed to show that they would be likely to prevail on the merits, the district court did not abuse its discretion in refusing to grant the requested preliminary injunctions—especially in light of the DuBridge Panel's recommendation to the Secretary that resumption of drilling would lessen the likelihood of another blowout.

1. The Outer Continental Shelf Lands Act and the administrative regulations thereunder on which petitioners rely (Pet. Apps. C, D, E and F) contain no provision requiring either the Secretary of the Interior or the Corps of Engineers to hold a public hearing prior to the authorization of further oil drilling or platform construction in this case. The only Department of the Interior regulation specifically referring to public hearings is one promulgated in August 1969 (34 Fed. Reg. 13549) which provides that a representative of the Sec-

[3] The applicability of the National Environmental Policy Act of 1969, 42 U.S.C. (Supp. V) 4321, *et seq.*, 83 Stat. 852, to petitioners' underlying requests for relief is also at issue before the three-judge district court (Pet. 11, n. 6).

[4] Petitioners suggest (Pet. 16–17) that this Court defer action on this petition until the three-judge district court has rendered its decision on the constitutional issues there presented. In our view, however, this petition, which involves only the denial of preliminary injunctions, presents no substantial question and such deferral is, therefore, unnecessary.

retary "may hold public hearings" in evaluating the likely effects of a proposed leasing program. 43 C.F.R. 3381.4 (Pet. App. 34–35). This regulation, which in terms is permissive rather than mandatory, is, in any event, not relevant here because the leases were all awarded in 1968,[5] prior to the blowout and the Secretary's suspension of drilling. Once the leases have been awarded (as here), their administration is principally a matter between the lessees and the Secretary, who is empowered under Section 5 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1334 (Pet. App. 23–26), to take such action as he deems necessary to conserve natural resources and prevent injury to life or property. See 30 C.F.R. 250.1, 250.11 and 250.12 (Pet. App. 29–31). While the regulations governing the administration of leases provide that a representative of the Secretary under certain circumstances "may consult with, and receive comments from, lessees, operators, and other interested parties," 30 C.F.R. 250.11 (Pet. App. 30), there is no requirement that the representative hold public hearings.

2. Since the Secretary of the Interior has the major responsibility under the Act for selecting tracts for

[5] Although no public hearings were held prior to the awarding of these leases, it is now the policy of the Secretary to conduct public hearings as a matter of course prior to a major oil or gas lease sale for offshore lands. Public hearings, for example, were recently held in conjunction with a major oil and gas lease sale for submerged offshore lands located off Western Louisiana. See 35 Fed. Reg. 8699. In October of this year, the Secretary submitted an environmental statement on the proposed lease sale to the Council on Environmental Quality, which statement was prepared in conformity with Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. (Supp. V) 4332(2)(C).

leasing, selling the leases, and administering the leases and must consider the broad effects of such leasing on the environment, the role of the Corps of Engineers in determining whether to permit the construction of drilling platforms by lessees is limited to a consideration of the effect of such platforms on navigation. 43 U.S.C. 1333(f) (Pet. App. 23). As pointed out by the court below (Pet. App. 4–6), the pertinent regulations of the Corps of Engineers were recently amended to make the division of authority between the Secretary and the Corps explicit. The amended regulation reads in part (35 Fed. Reg. 79, 80; 33 C.F.R. 209.120(g)(3)) (Pet. App. 20):

> Since the Corps of Engineers considers only the effect on navigation and national security, public hearings will not normally be held in connection with applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior which has responsibility for other aspects of the public interest. Public hearings will be held by the Corps of Engineers only when in the District Engineer's judgment opponents have a reasonable complaint based on interference with navigation or on adverse effects on national security.

No one has seriously contended in the instant proceedings that the structures for which certain lessees are seeking Corps approval would physically interfere with navigation in the Santa Barbara Channel.[6]

CONCLUSION

For the foregoing reasons, the petitioner for a writ of certiorari should be denied.

Respectfully submitted.

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[6] The responsibility for taking into account the possible adverse impact of oil leaks themselves (as opposed to the physical platforms alone) on navigation lies with the Secretary of the Interior as part of his supervisory obligations under Section 5 of the Outer Continental Shelf Lands Act.

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